Supreme Court, U.S.
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No. 95-676

In The

Supreme Court of the United States

October Term, 1995

DOMINGO GUEVARA,

Petitioner,

v.

MARITIME OVERSEAS CORPORATION,

Respondent.

On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Fifth Circuit

BRIEF OF UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA AS AMICUS CURIAE IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the general maritime law of the United States permits an award of punitive damages against a maritime employer who willfully and callously violates an ill or injured seaman's rights by refusing to provide maintenance (food and lodging) and cure (medical care).

TABLE OF CONTENTS

Page

QUESTION PRESENTED..... i

TABLE OF AUTHORITIES..... iii

INTEREST OF THE AMICUS CURIAE..... 1

THE UBCJA'S REASONS FOR SUPPORTING THE PETITION..... 2

TABLE OF AUTHORITIES

Page(s)

FEDERAL CASES

Aguilar v. Standard Oil Co. of New Jersey, 318 U.S. 724 (1943) 3

Breese v. AWI, Inc., 823 F.2d 100 (5th Cir. 1987) 5

Calmar S.S. Corp. v. Taylor, 303 U.S. 525 (1938) 3, 4

Chandris, Inc. v. Latsis, ___ U.S. ___, 115 S.Ct. 2172 (1995) 8

Deisler v. McCormack Aggregates Co., 54 F.3d 1074 (3d Cir. 1995) 7

Flores v. Carnival Cruise Lines, 47 F.3d 1120 (11th Cir. 1995) 7

Gardiner v. Sea-Land Service, Inc., 786 F.2d 943 (9th Cir. 1986) 3

Gaspard v. Taylor Diving & Salvage Co., Inc., 649 F.2d 372 (5th Cir. 1981) 2

Glynn v. Roy Al Boat Management Corp., 57 F.3d 1495 (9th Cir. 1995) 6, 7

Grimes v. Raymond Concrete Pile Co., 356 U.S. 252 (1958) 2

Guevara v. Maritime Overseas Corp., 59 F.3d 1496 (5th Cir. 1995) 6, 7

Harper v. Zapata Offshore Co., 741 F.2d 87 (5th Cir. 1984) 6

Hines v. J.A. LaPorte, Inc., 820 F.2d 1187 (11th Cir. 1987) 6

Hodges v. Keystone Shipping Co., 578 F. Supp. 620 (S.D.Tex. 1983) 5

TABLE OF AUTHORITIES – Continued

Page(s)

Holmes v. J. Ray McDermott & Co., 734 F.2d 1110 (5th Cir. 1984) 6

Hudspeth v. Atlantic & Gulf Stevedores Inc., 266 F. Supp. 937 (E.D.La. 1967) 4

Incandela v. American Dredging Co., 659 F.2d 11 (2d Cir. 1981) 2, 7

Kopczynski v. The JACQUELINE, 742 F.2d 555 (9th Cir. 1984) 2

Kraljic v. Berman Enterprises, Inc., 575 F.2d 412 (2d Cir. 1978) 5

Manuel v. U.S., 50 F.3d 1253 (4th Cir. 1995) 5, 7

McDermott Intern., Inc. v. Wilander, 498 U.S. 337 (1991) 7

Miles v. Apex Maritime Corp., 498 U.S. 19 (1990) 6

Miron v. All Alaskan Seafoods, Inc., 708 F. Supp. 518 (W.D.Wa. 1988) 8

Pickle v. International Oilfield, 791 F.2d 1237 (5th Cir. 1986) 2, 3

Picou v. American Offshore Fleet, Inc., 576 F.2d 585 (5th Cir. 1978) 5

Robinson v. Pocahontas, Inc., 477 F.2d 1048 (1st Cir. 1978) 6, 7

Rodriguez Alvarez v. Bahama Cruise Line, Inc., 898 F.2d 312 (2d Cir. 1990) 5, 7

Romero v. International Terminal Operating Co., 358 U.S. 354 (1959) 8

Rutherford v. Sea-Land Service, Inc., 575 F. Supp. 1365 (N.D.Ca. 1983) 4, 8

TABLE OF AUTHORITIES – Continued

Page(s)

Solet v. M/V Capt. H.V. Dufrene, 303 F.Supp. 980 (E.D.La. 1969) 5, 6

Southwest Marine, Inc. v. Gizoni, ___ U.S. ___, 112 S.Ct. 486 (1991) 7

Stanislawski v. Upper River Services, Inc., 6 F.3d 537 (8th Cir. 1993) 3, 4

Tullos v. Resource Drilling, Inc., 750 F.2d 380 (5th Cir. 1985) 6

Vaughan v. Atkinson, 369 U.S. 527 (1962) 4, 5, 7

Vella v. Ford Motor Co., 421 U.S. 1 (1975) 4

Wallace v. Oceaneering International, 727 F.2d 427 (5th Cir. 1984) 1, 2

Weason v. Harville, 706 P.2d 306 (Alaska 1985) 7

Williams v. Kingston Shipping Co., Inc., 925 F.2d 721 (4th Cir. 1991) 5

Williamson v. Western Pacific Dredging, 441 F.2d 65 (9th Cir. 1971) 4

Wood v. Diamond M. Dredging Co., 691 F.2d 1165 (5th Cir. 1982) 8

STATUTES

33 U.S.C. § 902(3)(G) 8

33 U.S.C. § 919 8

California Labor Code § 3203 7

TABLE OF AUTHORITIES – Continued

Page(s)

OTHER

1 *Benedict on Admiralty* (7th ed.) 1-20 2

Gillmore & Black, *The Law of Admiralty* (2d ed.) 281 2

Hillsman, "Looking for a Lodestar Among the Rocks and Shoals of Longshore Coverage," 3 *U.S.F.MAR.L.J.* 227 8

Kaufman, "Crisis in the Courts," *California Lawyer* (Aug. 1990) 9

Normann, "Has Found Been Lost? An Analysis of a Seldom Utilized Concept in the Maritime Law," 30 *Loy. L. Rev.* 875, 877 (1984) 3

Norris, "The Seaman as Wards of the Admirality," 52 *Mich. L. Rev.* 479 2

INTEREST OF THE *AMICUS CURIAE*

This brief *amicus curiae* is filed on behalf of the United Brotherhood of Carpenters and Joiners of America ("UBCJA"). The UBCJA is an international labor organization with affiliates in the United States and Canada. It enjoys a total membership of approximately 500,000 working men and women. Many of those men and women work upon the navigable waters of the United States. They work as commercial divers, commercial dive tenders, piledrivers, carpenters, riggers, welders, and marine platform builders. They work in the nation's harbors, bays and sounds, upon its Great Lakes and great rivers, and upon or beneath the high seas. They build, alter, repair, maintain and demolish piers, wharves, docks, bridges, oil platforms, submarine pipelines, underwater transit tubes and open ocean sewer outfalls. They perform that work from crane ships, drilling ships, derrick barges, pile driving barges, dredges, tugboats, crew boats, submersibles and other special purpose construction vessels. Their work "*necessarily* involves exposure to numerous marine perils, and is inherently maritime because it cannot be done on land."[1] They have therefore been cloaked with all the traditional rights and duties of

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[1] *Wallace v. Oceaneering International*, 727 F.2d 427, 436 (5th Cir.1984) [original emphasis].

"seamen,"[2] including the ancient right to maintenance, cure and found.[3] We respectfully submit that this standing gives them an abiding interest in the question presented by the Petition for Certiorari.

THE UBCJA'S REASONS FOR SUPPORTING THE PETITION

As the Court knows, maintenance, cure and found is the saltwater prototype of workers' compensation.[4] It descends from medieval sea codes and the shipowner's obligation to provide injured seamen with "a candle," "a nurse," fair quarters and food.[5]

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[2] *E.g., Grimes v. Raymond Concrete Pile Co.*, 356 U.S. 252 (1958) [piledriver held "seaman"]; *Pickle v. International Oilfield*, 791 F.2d 1237 (5th Cir. 1986) [commercial diver held "seaman"]; *Wallace v. Oceaneering International, supra* [same]; *Gaspard v. Taylor Diving & Salvage Co., Inc.*, 649 F.2d 372 (5th Cir. 1981) [same]; *Kopczynski v. The JACQUELINE*, 742 F.2d 555 (9th Cir. 1984) [commercial dive tender held "seaman"].

[3] *E.g., Pickle v. International Oilfield, supra*, 791 F.2d at 1242, fn. 6 [commercial diver awarded maintenance, cure and found]; *Gaspard v. Taylor Diving & Salvage Co., supra*, 649 F.2d 373, 374 (5 Cir. 1981) [commercial diver awarded maintenance and cure]; *Incandela v. American Dredging Co.*, 659 F.2d 13, 15 (2d Cir. 1981) [dredge hand awarded maintenance, cure and attorney's fees].

[4] *See*, Norris, "The Seaman as Wards of the Admiralty," 52 *Mich.L.Rev.* 479, 483 (1954) ["As a working man's remedy it anticipated industrial workmen's compensation by almost a thousand years."].

[5] Gilmore & Black, *The Law of Admiralty* (2d ed.) 281; 1 *Benedict on Admiralty* (7th ed.) 1-20.

> " 'Maintenance' is the duty of a shipowner to provide food and lodging to a seaman who falls ill or becomes injured while in the service of the ship. The right to maintenance is tied to the right to cure, i.e., necessary medical services, and both extend to the point of 'maximum recovery'. In addition, a seaman is entitled to recover unearned wages. In sum, the elements of the common law maintenance and cure action included a living allowance during the recovery period (maintenance), reimbursement for medical expenses (cure), and unearned wages for the period from the onset of injury or illness until the end of the voyage."[6]

"Found," in turn, is nothing more than the on-going obligation to provide totally disabled seamen with a living allowance after they've reached maximum medical recovery.[7]

Together, maintenance, cure and found comprise a no-fault remedy[8] that arises from the contract of employment[9] and "from the unique hazards attendant to the

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[6] *Gardiner v. Sea-Land Service, Inc.*, 786 F.2d 943, 945-946 (9th Cir. 1986) [citations omitted].

[7] *Pickle v. International Oilfield, Inc., supra*, 791 F.2d at 1242, fn. 6. *See gen.*, Normann, "Has Found Been Lost? An Analysis of a Seldom Utilized Concept in the Maritime Law," 30 *Loy.L.Rev.* 875, 877 (1984).

[8] *Aguilar v. Standard Oil Co. of New Jersey*, 318 U.S. 724, 730-31 (1943).

[9] *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 527 (1938); *Stanislawski v. Upper River Services, Inc.*, 6 F.3d 537, 540 (8th Cir. 1993).

work of seamen."[10] Its beneficent principles bear the indelible imprimatur of the "admiralty's tender regard for seamen."[11] While the older cases speak of providing the injured seaman with "food and lodging of the kind and quality of that which he would receive aboard ship",[12] the newer decisions guarantee this traditional remedy to "commuter seamen" who eat and sleep ashore.[13] "Its purpose is to foster the combined goals of encouraging marine commerce and assuring the well-being of the seaman."[14] "It does not depend upon the negligence or culpability of the owner, and is not even restricted to those cases where the seaman's employment is the cause of the injury or illness."[15] In theory, at least, "the breadth and inclusiveness of the shipowner's duty assure its easy and ready administration for 'it has few exceptions or conditions to stir contentions, cause delays and invite litigations.' "[16] Sadly, this is not necessarily true in practice.

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[10] *Rutherford v. Sea-Land Service, Inc.*, 575 F.Supp. 1365, 1369 (N.D.Ca. 1983).

[11] *Vaughan v. Atkinson*, 369 U.S. 527 (1962).

[12] *E.g., Calmar S.S. Corp. v. Taylor, supra*, 303 U.S. at 528.

[13] *See, Williamson v. Western Pacific Dredging*, 441 F.2d 65, 66 (9th Cir. 1971) [live-at-home dredgehand awarded maintenance for injuries sustained on city streets while commuting to his vessel]; *Hudspeth v. Atlantic & Gulf Stevedores Inc.*, 266 F.Supp. 937 (E.D.La. 1967) [live-at-home tugboat hand awarded maintenance for injuries suffered afloat].

[14] *Id.*

[15] *Calmar S.S. Corp. v. Taylor, supra; Stanislawski v. Upper River Services, Inc., supra.*

[16] *Vella v. Ford Motor Co.*, 421 U.S. 1, 4 (1975) *quoting Farrell v. United States*, 336 U.S. 511, 516 (1949).

In the real world, those who adjust seamen's claims do not always comport themselves in ways which assure the "easy and ready administration" of the remedy. It is impossible to catalogue all their "foot-dragging," "hard-balling,"[17] "stonewalling"[18] tactics because they're as diverse as human ingenuity and ill will can make them. The cases thus compose a long and doleful litany of lax investigations,[19] unjustified refusals to pay,[20]

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[17] *See* the Sterbcow Affidavit, App. G to the Petition for Certiorari, pp. G1-G3 ["Now that *Guevara* has freed the employers of ill and injured seamen from any threat of punitive damages for wrongfully withholding maintenance and cure, the [shipowners'] lawyers obviously believe their client's rational pursuit of self-interest will be better served by adopting a grudging approach to the provision of medical care for ill and injured seamen."].

[18] *Rodriguez Alvarez v. Bahama Cruise Line, Inc.*, 898 F.2d 312 (2d Cir. 1990) [shipowner and its attorneys stonewalled seaman's maintenance and cure claims by asserting that his failure to obtain their prior consent to his choice of physician relieved it of its obligation to pay].

[19] *Vaughan v. Atkinson, supra* [shipowner exhibited willful and persistent default and did not investigate seaman's claims]; *Breese v. AWI, Inc.*, 823 F.2d 100 (5th Cir. 1987) [shipowner's investigation of seaman's claim was impermissibly lax]; *Picou v. American Offshore Fleet, Inc.*, 576 F.2d 585 (5th Cir. 1978) [shipowner failed to investigate seaman's claim].

[20] *Manuel v. U.S.*, 50 F.3d 1253 (4th Cir. 1995) [ship operator arbitrarily refused to pay maintenance and cure]; *Williams v. Kingston Shipping Co., Inc.*, 925 F.2d 721 (4th Cir. 1991) [shipowner flatly and persistently refused to pay maintenance and cure]; *Kraljic v. Berman Enterprises, Inc.*, 575 F.2d 412 (2d Cir. 1978) [shipowner willfully refused to provide maintenance and cure for documented injury]; *Hodges v. Keystone Shipping Co.*, 578 F.Supp. 620 (S.D.Tex. 1983) [shipowner unjustifiably refused to pay seaman's maintenance and cure for ten months, until suit

retaliatory[21] or premature terminations,[22] callous failures to reinstate[23] and deliberate underpayments.[24] So long as seamen could hang the dreaded sword of punitive damages over their employers' claims adjusters' heads, they had a powerful deterrent against these fell practices. The UBCJA respectfully submits that the Fifth[25] and Ninth[26] Circuits' recent decisions to deny seamen their traditional rights to punitive recovery, on grounds that those traditions were somehow foreclosed by *Miles*,[27] not only

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was filed]; *Solet v. M/V Capt. H.V. Dufrene*, 303 F.Supp. 980 (E.D.La. 1969) [shipowner willfully and persistently refused to pay maintenance and cure].

[21] *Robinson v. Pocahontas, Inc.*, 477 F.2d 1048 (1st Cir. 1978) [shipowner terminated all benefits after seaman refused settlement offer and hired attorney].

[22] *Hines v. J.A. LaPorte, Inc.*, 820 F.2d 1187 (11th Cir. 1987) [shipowner wrongfully terminated maintenance and cure when physician approved seamen's return to light duty work even though his condition had not stabilized and he still needed ongoing care].

[23] *Tullos v. Resource Drilling, Inc.*, 750 F.2d 380 (5th Cir. 1985) [shipowner failed to reinstate seaman's benefits after treating physician diagnosed back injury]; *Holmes v. J. Ray McDermott & Co.*, 734 F.2d 1110 (5th Cir. 1984) [shipowner failed to reinstate seaman's benefits after treating physician diagnosed herniated disc].

[24] *Harper v. Zapata Offshore Co.*, 741 F.2d 87 (5th Cir. 1984) [shipowner paid a grossly inadequate amount of maintenance in callous disregard of the seaman's rights.].

[25] *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir. 1995).

[26] *Glynn v. Roy Al Boat Management Corp.*, 57 F.3d 1495 (9th Cir. 1995).

[27] *Miles v. Apex Maritime Corp.*, 498 U.S. 19 (1990).

turned that sword into a shield for bad faith claims practices but tipped the immemorial imbalance between injured workers and their corporate employers in a direction that gave little weight to the "admiralty's tender regard for seamen."[28]

Your Amicus cannot add to the many sound reasons for granting certiorari set forth in Domingo Guevara's well researched Petition, except to say that the UBCJA represents seamen from Alaska to Florida. The legal conflicts which Mr. Guevara's Petition attempts to redress[29] mean that some of our members will still be able to avail themselves of the seaman's traditional rights to exemplary recovery while others will not. That disparity can only lead to much hardship and needless litigation.

Because seamen are "members of a crew",[30] and therefore excluded from state[31] and federal workers'

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[28] *Vaughan v. Atkinson*, 369 U.S. 527 (1962).

[29] *Compare Robinson v. Pocahontas, Inc., supra* [full punitive damages and attorney's fees available in cases where shipowner has willfully and arbitrarily refused to pay maintenance and cure], *Manuel v. U.S., supra* [same], *Flores v. Carnival Cruise Lines*, 47 F.2d 1120 (11th Cir. 1995) [same] and *Weason v. Harville*, 706 P.2d 306 (Alaska 1985) [same] *with Rodriguez Alvarez v. Bahama Cruise Lines, Inc., supra* [only attorneys available], *Incandela v. American Dredging Co.*, 659 F.2d 11 (2d Cir. 1981) [same], *Deisler v. McCormack Aggregates Co.*, 54 F.3d 1074 (3d Cir. 1995) [same], *Guevara, supra* [same], and *Glynn v. Roy Al Boat Management Corp., supra*, [same].

[30] *See e.g., McDermott Intern., Inc. v. Wilander*, 498 U.S. 337 (1991); *Southwest Marine, Inc. v. Gizoni*, ___ U.S. ___, 112 S.Ct. 486 (1991).

[31] *See e.g.*, California Labor Code § 3203 [excluding "employers or employments which, according to law, are so

compensation schemes,[32] maintenance and cure is the only relief which they and their dependents can expect in the immediate wake of a disabling accident.[33] But unlike workers' compensation claims, which can be administered relatively quickly by non-judicial agencies,[34] a contested claim for maintenance and cure must be determined in state or federal court.[35] Because of all the factual issues they raise,[36] maintenance and cure claims seldom lend themselves to summary determination.[37] What is more, because state and federal dockets are so crowded nowadays, civil litigants typically wait years before their cases are finally called to trial, especially in

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engaged in interstate commerce as not to be subject to the legislative power of the state" from the California workers' compensation system].

[32] 33 U.S.C. § 902(3)(G).

[33] *See gen.* Hillsman, "Looking for a Lodestar Among the Rocks and Shoals of Longshore Coverage," 3 *U.S.F.Mar.L.J.* 227, 253 *et seq.*

[34] *E.g.*, 33 U.S.C. § 919.

[35] *Romero v. International Terminal Operating Co.*, 358 U.S. 354, 380-81 (1959).

[36] "The monetary value of . . . maintenance is a question of fact to be resolved by the trial court based upon all the evidence before it." *Rutherford, supra*, 575 F.Supp. at 1369; *Gardiner, supra*, 786 F.2d at 946; *Wood v. Diamond M. Dredging Co.*, 691 F.2d 1165, 1171 (5th Cir. 1982). More importantly, courts must first decide the "fact intensive" question of seaman status before they can even sit down to the issue of maintenance. *Chandris, Inc. v. Latsis*, ___ U.S. ___, 115 S.Ct. 2172 (1995).

[37] *See e.g., Miron v. All Alaskan Seafoods, Inc.*, 708 F.Supp. 518, 519 (W.D.Wa. 1988).

the highly urbanized maritime venues.[38] Unless they are prepared to make themselves the wards of an already overburdened social welfare system, this leaves injured seamen and their dependents without any practical remedy in the meantime. If the employer or its carrier decide to play hardball, this can be a desperate position. That's why we would like to see this Court determine whether the general maritime law still provides an equalizing deterrent like punitive damages.

WHEREFORE the UBCJA respectfully urges the Court to grant the petition for writ of certiorari herein.

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[38] *See e.g.*, Kaufman, "Crisis in the Courts," *California Lawyer* (Aug. 1990) 28.